June 2026

Understanding Aboriginal Title and Fee Simple Ownership in British Columbia

Conversations about land ownership in British Columbia increasingly include terms such as "Aboriginal title," "Crown land," "unceded territory," and "fee simple ownership." These concepts are rooted in Canada's legal and constitutional framework and are important to understanding how land ownership and governance operate in British Columbia today.

What Is Aboriginal Title?

Essentially, Aboriginal title is a right to the land itself that First Nations have held collectively since prior to colonization. Once legally proven or recognized in law, it is protected under section 35 of the *Constitution Act, 1982*. It is based on the long-standing occupation, use, and governance of land by Indigenous peoples prior to European settlement and the assertion of Crown sovereignty. Importantly, Aboriginal title exists independently of the land title registry as it predates it.

Courts have held that Aboriginal title is a pre-existing legal interest that existed prior to the creation of Canada and it is not a right created by the courts or granted by governments through policy or legislation like British Columbia's *Declaration on the Rights of Indigenous Peoples Act* (DRIPA). Aboriginal title is a challenge to Crown title (which is the assertion of Crown sovereignty in British Columbia). Crown title gets challenged in courts by First Nations because, unlike the majority of Canada, British Columbia is largely devoid of treaties, thus leaving the question of land ownership unresolved.

For readers interested in learning more, the Supreme Court of Canada's decision in ***Tsilhqot'in Nation v. British Columbia*** was the first case in Canada to grant a declaration of Aboriginal title and provides important guidance on how Aboriginal title is established and exercised.

What Is Crown Land?

Crown land refers to land owned by the provincial or federal government and makes up most of British Columbia's land base. Governments use Crown land for purposes such as natural resource management, parks, infrastructure, and public services. Much of British Columbia was historically treated as Crown land, despite many areas never being covered by treaties with First Nations. This helps explain why questions surrounding Aboriginal title and land governance continue to evolve today.

What Does “Unceded Territory” Mean?

“Unceded” means land that was not formally surrendered or transferred to the Crown through treaty. Unlike many other parts of Canada, much of British Columbia is considered unceded because treaties were never completed across large portions of the province. This historical reality forms an important part of modern conversations around Aboriginal title, reconciliation, and land governance in British Columbia.

What Is Fee Simple Ownership?

British Columbia has a property ownership structure where Crown title is the underlying foundation and fee simple ownership sits on top of it. Fee simple ownership is the most complete form of ownership recognized under Canadian common law and land title legislation. Aboriginal title claims have generally been advanced against the Crown rather than privately held fee simple interests.

In British Columbia, fee simple ownership is supported through the Torrens land title system, which provides certainty by recognizing the registered owner on title as the legal owner of the property. Fee simple ownership generally includes the right to: Use the land, sell or transfer it, mortgage or lease it, and pass it to heirs.

Importantly, fee simple ownership is not absolute. It remains subject to the authorities of the Crown’s underlying title, which includes decision-making over zoning and land-use laws, environmental regulations, taxation, easements and covenants, expropriation powers, and other legal interests recognized by law. A declaration of Aboriginal title would be a challenge to the Crown’s authority in this regard, not to the fee simple title that exists overtop of it.

Who Can Hold Fee Simple Ownership?

Not all fee simple land is privately owned by third parties. Fee simple ownership is simply a form of property interest and can be held by individuals, corporations, municipalities, Crown entities, and First Nations themselves. In many Aboriginal title cases, courts distinguish between privately owned third-party residential or commercial properties and lands held by governments or public authorities, recognizing that these categories may raise different legal and constitutional considerations. In recent years, legislative changes have also supported First Nations holding fee simple interests directly within British Columbia’s land title system.

How Do Aboriginal Title and Fee Simple Ownership Relate?

Aboriginal title and fee simple ownership arise from different legal foundations. Canadian courts have recognized that both exist within British Columbia's broader legal landscape, although the relationship between them continues to evolve through court decisions, legislation, negotiated agreements, and reconciliation processes.

Importantly, the legal relationship between Aboriginal title and fee simple ownership is often context-specific. Courts may distinguish between Crown land, government-held fee simple land, privately held fee simple land, and lands owned by First Nations themselves, which is why different Aboriginal title cases may involve different legal outcomes or remedies.

Aboriginal Title	Fee Simple Ownership
Constitutionally protected	Created through statute and common law
Based on Indigenous occupation prior to colonization	Derived from Crown grants and land title legislation
Held collectively by a Nation	Held by individuals, corporations, governments, First Nations, or other entities
Exists independently of registration	Exists through registration in the land title system
Rooted in Indigenous legal and historical connection to land	Exists within a property system founded on Crown title
Collective in nature	Can be individually or institutionally held

Going Forward

Understanding Aboriginal title and fee simple ownership requires recognizing that British Columbia's land system reflects both Indigenous and Crown legal histories. As reconciliation and land governance continue to evolve, these conversations will remain an important part of understanding property ownership in British Columbia.

Note: This resource is intended as a general, high-level overview of evolving legal concepts relating to Aboriginal title, fee simple ownership, Crown land, and land governance in British Columbia. It is provided for informational and educational purposes only and does not constitute legal advice. The legal principles discussed are complex, context-specific, and continue to develop through court decisions, legislation, treaties, negotiated agreements, and reconciliation processes.

This project is made possible with funding from the Real Estate Foundation of BC